=))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 157 of 1995

with

CRIMINAL APPEAL No 503 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GHANCHI KARSHANBHAI BHAGWANBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 157 of 1995
   MR YOGESH S LAKHANI for Appellants No. 1-2
   MR AJ DESAI, APP for Respondent No. 1
2. Criminal Appeal No. 503 of 1995
   MR AJ DESAI, APP for Appellant No. 1
   DELETED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 04/09/2003

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.C.PATEL)

1. The appellants in Criminal Appeal No.157 of 1995 were the accused nos. 1 and 2 in Sessions Case No.90 of 1993 before the Additional Sessions Judge, Banaskantha who, by his judgment and order dated 4th February, 1995, convicted the appellant no.1 of the offence under Section 302 of the I.P.C. and sentenced him to life imprisonment and to pay a fine of Rs.500/-, in default, Simple Imprisonment for six months and convicted the appellant no.2 of the offence under Section 324 of the I.P.C. and sentenced him to Rigorous Imprisonment for six months and to pay a fine of Rs.300/-, in default, Simple Imprisonment for one month. He acquitted the original accused nos.3 and 4 of the offence under Section 302 read with Section 114 of the I.P.C. The appellants have, therefore, filed Criminal Appeal No.157 of 1995 challenging the said order of conviction and sentence. The State has filed Criminal Appeal No.503 of 1995 challenging the acquittal of respondents - original accused nos.3 and 4. At the time of admission, the learned APP did not press the appeal against respondent no.4 - original accused no.4 and the appeal against her was dismissed.

2. The charge against the accused was that the appellant no.1 Ghanchi Karsanbhai Bhagwanbhai caused the death of Chandansinh Mafatsinh Darbar by giving a dharia blow on his head. The incident was alleged to have occurred at 3 o'clock in the afternoon on 6th April, 1993 in the field of the appellant no.1. The appellant no.2 was charged with the offence under Section 302 read with Section 114 of the I.P.C. It was also alleged that in the same incident, the appellant no.2 had caused injury on the right forearm of complainant Ganeshbhai Prabhubhai and had committed the offence under Section 324 of I.P.C.

3. The prosecution case is to be found in the evidence of complainant Ganeshbhai Prabhubhai (p.w.2). His evidence shows that at the time of the incident, he was cultivating the land of Chandansinh Mafatsinh on a crop-share basis. Pruthviraj was the younger brother of Chandansinh. Pruthviraj kept buffaloes and cattle and

also a horse. On the day before the incident, the horse had strayed into the field of appellant no.1 Karsan Bhagwan. He tied the horse in his field. Initially, Ganeshbhai went to Karsanbhai and told him that he would pay the damage and requested him to release the horse but Karsan Bhagwan refused to do so. Next day, he and Chandansinh went to the field of appellant no.1 to take back the horse. Chandansinh told Karsanbhai to accept payment for the damage. However, Karsan did not give any reply but delivered a dharia blow on the front of Chandansinh's head. Chandansinh fell down. Ganeshbhai, therefore, gave a push to Karsan and he fell down. At that time, the appellant no.2 Pira Ladha gave a dharia blow on his right forearm. The accused no.3 Mala Bhagwan came there at that time and said "kill him". Chandansinh was taken to hospital in a jeep and from there he was sent to Civil Hospital at Ahmedabad. Ganeshbhai was also treated at the hospital. Then he went to the police station at 8.30 at night and lodged his complaint (Exh.50). According to him, Chandansinh died on the way to Ahmedabad and his body was brought back to the hospital at Deodar at midnight.

4. The other witness to the incident was Pruthviraj Mafatsinh Chauhan, the brother of Chandansinh. According to him, he too had accompanied Chandansinh and Ganesh Prabhu to take back the horse. Karsan had given abuses and refused to give back the horse and he had given a dharia blow on the head of Chandansinh.

5. The post-mortem on the body of Chandansinh was carried out by Dr. Pravinbhai Nathalal Solanki (p.w.1) who was the Medical Officer on duty at Community Health Centre, Deodar. The post-mortem report (Exh.27) shows that there was an incised wound on the Fronto Parietal region of scalp and there was an internal injury on the brain and all its meninges. The cause of death was due to shock because of injury to the brain.

6. Both Ganeshbhai Prabhubhai (p.w.2) and Pruthviraj (p.w.4) were cross-examined at length but nothing was elicited which would shake their testimony. The defence that was put to Ganeshbhai in cross-examination was that they had given abuses to appellant no.1 and told him to give back the horse and that appellant no.1 had demanded payment for the damage but they had refused to make the payment and that Ganeshbhai had given a stick blow on the forehead of appellant no.1. It was also put to him that Karsan Bhagwan had tried to ward off the blow with his left hand and he had also suffered an injury on the left hand. The witness denied the suggestions made in the

cross-examination. Thus, the presence of Karsanbhai at the time of the incident is not disputed. According to the defence, Karsanbhai had also lodged a complaint (Exh.67) after his arrest in which he alleged that Ganesh Prabhu had given him a stick blow below his right eye and had also given one blow on his left hand.

7. The appellant no.1 was also given treatment for his injury and the medical certificate is at Exh.79 which shows that he had suffered a C.L.W. on his zygomatic region over lateral angle of right eye. There was also an injury on his left hand.

8. As stated earlier, it is not disputed that there was an incident in the field of Karsanbhai. There is no reason to disbelieve the evidence of two eye-witnesses who say that the appellant no.1 delivered a dharia blow on the head of Chandansinh. Their evidence is also corroborated by the medical evidence. Thus, Chandansinh died of the injury which was caused by the appellant no.1. However, it is contended on behalf of the appellant no.1 that there was no intention to kill and the offence would fall under Section 304 Part I of the I.P.C. Now, Pruthviraj has admitted in cross-examination that the appellant no.1 had tied the horse two days before the incident and that he had been trying to get back the horse for two days but appellant no.1 was refusing to do so. Hence, there must have been an exchange of words when Ganeshbhai, Pruthviraj and Chandansinh went to the field of appellant no.1 to get back the horse. It is also proved that in the same incident, the appellant no.1 suffered an injury. Thus, the evidence on record shows that there must have been an exchange of words and then there must have been a sudden fight without pre-meditation and the appellant no.1 delivered a dharia blow on the head of Chandansinh. Hence, the case would be covered under Exception 4 to Section 300 of the I.P.C. In our opinion, the offence will fall under Section 304 Part I of the I.P.C.

9. As far as appellant no.2 is concerned, he caused an injury to witness Ganeshbhai on his hand. The injury certificate (Exh.22) shows that Ganeshbhai had suffered an incised wound on the ulnar 1/2 part of middle 1/3 part of ventral aspect of right forearm. The appellant no.2 had, therefore, rightly been convicted under Section 324 of the I.P.C.

10. As far as the appeal against acquittal of the accused no.3 is concerned, there is no evidence that he had played any part in the incident. There is no reason

to interfere with his acquittal.

11. As a result of the above discussion, Criminal Appeal No.157 of 1995 filed by the convicted accused nos.1 (Ghanchi Karsanbhai Bhagwanbhai) and 2 (Ghanchi Pirabhai Ladhabhai) is partly allowed. The conviction of appellant no.1 (Ghanchi Karsanbhai Bhagwanbhai) is altered from that under Section 302 of the I.P.C. to one under Section 304 Part I of the I.P.C. and he is sentenced to suffer Rigorous Imprisonment for 10 years and to pay a fine of Rs.500 (Rupees Five Hundred only), in default, to suffer Simple Imprisonment for one month. As for appellant no.2 (Ghanchi Pirabhai Ladhabhai), his conviction under Section 324 of the I.P.C. is confirmed. However, in the facts and circumstances of the case, he is sentenced to suffer Rigorous Imprisonment for one month and to pay a fine of Rs.1,000 (Rupees One Thousand only), in default, Simple Imprisonment for one month. The appellant no.2 will be entitled to the benefit of set-off for the period already spent as an undertrial prisoner. The appellant no.2 shall surrender to the jail authorities to serve the remaining part of the sentence. Criminal Appeal No.503 of 1995 filed by the State is dismissed.

(N.G. Nandi, J.)

(M.C. Patel, J.)

hki